

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

January 9, 2006

In the Matter of
Paul Knower

Docket No. 2005-238
File No. 304-223
Templeton

RECOMMENDED DECISION
ON MOTION FOR RECONSIDERATION

The petitioner has moved for reconsideration of the Final Decision which dismissed this appeal for lack of prosecution, specifically for failing to respond to an Order to File a More Definite Statement. The petitioner's motion requests that the appeal be allowed to go forward because he did respond as required by the Order. Claiming "all you asked for was indeed sent and received by all parties", the petitioner provided copies of certified mail green cards showing items delivered to both the Litigation Manager in the Department's Office of General Counsel and the Case Administrator on November 30, 2005. Attached to the motion are copies of a letter from the petitioner to this office dated November 29, 2005 responding to the Order, along with a copy of the Superseding Order of Conditions. The petitioner requests asks that the hearing be reopened as he provided the information required by the Order, and that he should not be responsible for any misdelivery of mail within the agency.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

DEP on the World Wide Web: <http://www.mass.gov/dep>



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I recommend granting the petitioner's motion for reconsideration. It appears that the petitioners' submittal in response to the Order was received by the Department on November 30, 2005, and would have been mailed at the latest on November 29, 2005, the last day allowed by the Order to file the submission by mail. Both copies of the materials were apparently misdirected to the agency's counsel, and as a result this office did not receive its copy of the submission.¹ I therefore recommend that the petitioner's motion for reconsideration be granted.

I add, however, that although the petitioner states that he responded with all the information required by the Order, the November 29, 2005 submission does not clarify his standing to request an appeal, as required in the Order for a More Definite Statement, or whether he participated in the prior permitting proceedings. Should this recommended decision be adopted, this office will require the petitioner to establish his standing, and prior participation to satisfy 310 CMR 1.01(6)(b).

NOTICE

This decision is a recommended decision by the Presiding Officer on a motion for reconsideration. It has been transmitted to the Commissioner for his final decision on reconsideration on the motion. This decision is therefore not a final decision on reconsideration, and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's final decision on the motion for reconsideration is subject to appeal to court and will contain a notice to that effect.

¹ Counsel for the Department has since provided the copy of the petitioner's November 29 2005 submission addressed to the Case Administrator of this office, but delivered to the assigned attorney in the office of general counsel

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended decision on the motion for reconsideration or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Commissioner Robert W. Golledge, Jr., January 26, 2006.